

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
VICTORIA DIVISION**

STATE OF TEXAS; STATE OF
LOUISIANA,

Plaintiffs,

v.

The UNITED STATES OF AMERICA;
ALEJANDRO MAYORKAS, Secretary of the
United States Department of Homeland
Security, in his official capacity; UNITED
STATES DEPARTMENT OF HOMELAND
SECURITY; TROY MILLER, Senior Official
Performing the Duties of the Commissioner of
U.S. Customs and Border Protection, in his
official capacity; U.S. CUSTOMS AND
BORDER PROTECTION; TAE JOHNSON,
Acting Director of U.S. Immigration and
Customs Enforcement, in his official capacity;
U.S. IMMIGRATION AND CUSTOMS
ENFORCEMENT; TRACY RENAUD,
Senior Official Performing the Duties of the
Director of the U.S. Citizenship and
Immigration Services, in her official capacity;
U.S. CITIZENSHIP AND IMMIGRATION
SERVICES,

Defendants.

Civ. Action No. 6:21-cv-00016

PLAINTIFFS' RESPONSE TO NOTICE OF SUPPLEMENTAL AUTHORITY

Defendants' supplemental authority does not support their arguments in this case. First, *California v. Texas* says nothing about whether Plaintiffs have "establish[ed] that third parties will take any specific actions because of" the February 18 Memorandum. ECF 57 at 2. In that case, the Supreme Court concluded that "the States have not demonstrated that an unenforceable mandate will cause their residents to enroll in valuable benefits programs that they would otherwise forgo." *California v. Texas*, No. 19-1019, 2021 WL 2459255, at *9 (U.S. June 17, 2021). The burden was higher because, according to the majority opinion, "neither logic nor intuition" supported that prediction. *Id.* at *8 (asking "without a penalty, what incentive could the provision provide?").

In this case, however, there is nothing counter-intuitive about the idea that the February 18 Memorandum increases the number of criminal aliens imposing costs on Texas. ICE officials themselves attribute the rescinded detainer requests "to the new 'enforcement priorities' established by memoranda." ECF 46 ¶ 17. And Texas officials have thoroughly explained the costs that flow from the federal government not detaining criminal aliens. *See, e.g.*, ECF 19-5 ¶ 8 (recidivism); ECF 19-6 ¶ 8 (incarceration); ECF 19-7 ¶ 11 (healthcare); ECF 19-8 ¶ 8 (education).

Second, *California v. Texas* does not prevent plaintiffs from challenging agency action that exacerbates a pre-existing injury. For example, although Plaintiffs' obligation to spend public-education resources on illegal aliens is attributable to *Plyler v. Doe*, 457 U.S. 202 (1982), the increase in the number of illegal aliens attending public schools (and the consequent increase in funding required) is attributable to the February 18 Memorandum. *See* ECF 18 at 9–10; ECF 19-9 ¶¶ 7–8. Similarly, although federal law requires Texas to cover illegal aliens through Emergency Medicaid, it is the February 18 Memorandum that increases the number of aliens who will have to be covered (and therefore the cost of the program). *See* ECF 18 at 10; ECF 19-7 ¶¶ 7, 11. In *California v. Texas*, by contrast, the Court concluded that there was no marginal cost attributable

to the challenged provision. “[O]ther provisions” imposed those costs, and there was no reason to think those other provisions “would not operate without” the challenged provision. *California*, 2021 WL 2459255, at *9.

Date: June 23, 2021

Respectfully submitted.

KEN PAXTON
Attorney General of Texas

/s/ Patrick K. Sweeten
PATRICK K. SWEETEN
Deputy Attorney General for Special Litigation
Attorney-in-Charge
Texas Bar No. 00798537
Southern District of Texas Bar No. 1829509
patrick.sweeten@oag.texas.gov

BRENT WEBSTER
First Assistant Attorney General

JUDD E. STONE II
Solicitor General

WILLIAM T. THOMPSON
Deputy Chief, Special Litigation Unit
Texas Bar No. 24088531
Southern District of Texas Bar No. 3053077
will.thompson@oag.texas.gov

RYAN D. WALTERS
Special Counsel
Texas Bar No. 24105085
Southern District of Texas Bar No. 3369185
ryan.walters@oag.texas.gov

OFFICE OF THE ATTORNEY GENERAL
P.O. Box 12548 (MC-009)
Austin, Texas 78711-2548
Tel.: (512) 463-2100
Fax: (512) 457-4410

COUNSEL FOR PLAINTIFF STATE OF TEXAS

JEFF LANDRY
LOUISIANA ATTORNEY GENERAL

/s/Elizabeth B. Murrill
ELIZABETH B. MURRILL
Solicitor General
JOSEPH S. ST. JOHN
Deputy Solicitor General

Louisiana Department of Justice
1885 N. Third St.
Baton Rouge, LA 70804
(225) 326-6766
murrille@ag.louisiana.gov
stjohnj@ag.louisiana.gov

COUNSEL FOR PLAINTIFF STATE OF LOUISIANA

CERTIFICATE OF COMPLIANCE

I certify that the total number of words in this response, exclusive of the matters designated for omission, is 373, as counted by Microsoft Word.

/s/ Patrick K. Sweeten
PATRICK K. SWEETEN

CERTIFICATE OF SERVICE

I certify that a true and accurate copy of the foregoing document was filed electronically (via CM/ECF) on June 23, 2021, which automatically serves all counsel of record who are registered to receive notices in this case.

/s/ Patrick K. Sweeten
PATRICK K. SWEETEN